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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,818	12/06/2001	Mary Carmen Gasco	8363M	7279

27752 7590 10/20/2004

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EXAMINER

CASTELLANO, STEPHEN J

ART UNIT PAPER NUMBER

3727

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/010,818  
Filing Date: December 06, 2001  
Appellant(s): GASCO ET AL.

**MAILED**  
**OCT 20 2004**  
**GROUP 3700**

Theodore P. Cummings  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed July 7, 2004.

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

Claims 2 and 21 have been canceled.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is substantially correct. The changes are as follows:

Issue V is whether the rejection of claims 6-9 under 35 U.S.C. 103(a) as being unpatentable over Beall ('510) and Beall ('485).

**(7) Grouping of Claims**

The rejection of claims 1 and 3-20 stand or fall together because appellant's brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

**(8) Claims Appealed**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) Prior Art of Record**

4,873,099	RUIZ	10-1989
4,011,347	GRIFFITH	03-1977
3,956,510	BEALL	05-1976
3,852,485	BEALL	12-1974
3,498,798	BAUR et al.	03-1970

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 3-5 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Beall ('510) and Beall ('485). This rejection is set forth in a prior Office Action, mailed on May 5, 2004.

Claims 1 and 3-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Baur. This rejection is set forth in a prior Office Action, mailed on May 5, 2004.

Claims 1, 3 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Ruiz. This rejection is set forth in a prior Office Action, mailed on May 5, 2004.

Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beall ('510) and Beall ('485). This rejection is set forth in a prior Office Action, mailed on May 5, 2004.

Claims 6-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baur in view of Griffith. This rejection is set forth in a prior Office Action, mailed on May 5, 2004.

***(11) Response to Argument***

**102(b) Rejection – Beall References**

Appellant argues that the structure of the combination of the shaped container bottom with a plurality of curved snack pieces is different. The disclosed structures of the Beall references when compared to the present invention are extremely different. However, the claimed structure of the present invention is not different from the disclosure in the Beall references, i.e., they are identical. Beall discloses a horizontally oriented, circular or annular array of stacked snack pieces placed within a rather shallow and wide circular container while the present invention discloses a vertically stacked column of snack pieces retained within a deep, tall and narrow circular container.

Claim 1 never claims that the snack pieces are stacked or for that matter that the snack pieces are vertically stacked. Claim 1 only claims that there is a plurality of snack pieces as the "concave curvature ... substantially conforms to the curvature of the snack pieces."

As a first point, appellant states that the Beall references do not have the saddle height. The saddle height is clearly shown in Fig. 4 and 5 of the Beall references. Appellant never discloses with particularity a definitive saddle shape, a flat piece bent to curve about a single axis (single curved) is saddle shaped. Claim 1 is silent to the saddle height being a saddle that is

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curved about more than a single axis. Appellant's specification supports that a single curved saddle shape has a saddle height, see page 4, line 14 which states "the chip has a saddle center height (h) (see Figure 4)." Also, "saddle height" is somewhat broad in that a saddle has many different heights. Note the different heights in Fig. 2 of the present invention. Note that saddle height "h" shown in both Fig. 2 and 4 of the present invention are relatively equivalent in that they relate to a central portion height of the snack piece.

As a second point, appellant notes and admits that the package curvature conforms to the outer (curved) edge of the snack piece but has incorrectly concludes that the package curvature doesn't conform to the snack piece curvature. Figure 2 clearly shows the concave-curvature of the bottom panel substantially conforms to the curvature of the lower edge portion of the snack pieces.

A third point, appellant states that there is no lowest snack piece since the snack pieces are at the same level. Therefore, any and every snack piece is considered the lowest. A portion of the peripheral edge of a lowest snack piece rests upon the bottom panel.

A fourth point, the bottom doesn't have a concave-curvature. See the comments made for the second point. There are concave-curvatures on both the interior and the exterior of the bottom panel of the Beall references. The concave-curvature on the interior conforms to the curved edge of the snack pieces of the Beall references (see Fig. 2). This concave-curvature is about a first axis of the bottom panel, the first axis is tangential to a circular line through the centers of the snack pieces of the Beall references.

**102(b) Rejection – Baur**

Appellant argues that the bottom member 12 of Baur is flat and not curved. The examiner has referred to the edge regions of the bottom member 12 of Baur as providing the concave-curvature limitations. There is no limitation in claims 1 or 11 that specifies that the center of the bottom panel must have the concave-curvature.

**102(b) Rejection – Ruiz**

Appellant argues that Ruiz discloses only a stack of shaped snack piece but doesn't disclose the package (i.e., the shaped container bottom). The examiner relies on the bottommost edible bowl (snack piece) as being the package or shaped container bottom.

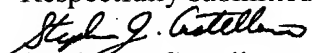
**103 Rejections**

The arguments made for the 103 rejections are moot since claims 6-9 stand or fall with independent claim 1.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Stephen J. Castellano

Primary Examiner

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sjc

October 15, 2004

Conferees

njn 

skc 

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